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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Judy Carrillo,

10 Plaintiff,

11 v.

12 99 Cents Only Stores LLC,

13 Defendant.
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No. CV-24-00938-PHX-DWL

ORDER

15 Pending before the Court is Plaintiff's Application for Leave to Proceed In Forma
16 Pauperis (Doc. 2), which the Court hereby grants. The Court will screen Plaintiff's
17 complaint (Doc. 1) pursuant to 28 U.S.C. § 1915(e)(2)¹ before it is allowed to be served.
18 Pursuant to that screening, the complaint will be dismissed with leave to amend.

19 **I. Legal Standard**

20 Under 28 U.S.C. § 1915(e)(2), a complaint is subject to dismissal if it contains
21 claims that are "frivolous or malicious," that "fail[] to state a claim upon which relief may
22 be granted," or that "seek[] monetary relief against a defendant who is immune from such
23 relief." *Id.* Additionally, under Federal Rule of Civil Procedure 8(a)(2), a pleading must
24 contain a "short and plain statement of the claim showing that the pleader is entitled to
25 relief." *Id.* Although Rule 8 does not demand detailed factual allegations, "it demands
26 more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v.*

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28 ¹ Although section 1915 largely concerns prisoner litigation, section 1915(e) applies
to all in forma pauperis proceedings. *Calhoun v. Stahl*, 254 F.3d 845, 845 (9th Cir. 2001)
("[T]he provisions of 28 U.S.C. § 1915(e)(2)(B) are not limited to prisoners.").

1 *Iqbal*, 556 U.S. 662, 678 (2009). “Threadbare recitals of the elements of a cause of action,
2 supported by mere conclusory statements, do not suffice.” *Id.*

3 “[A] complaint must contain sufficient factual matter, accepted as true, to ‘state a
4 claim to relief that is plausible on its face.’” *Id.* (quoting *Bell Atlantic Corp. v. Twombly*,
5 550 U.S. 544, 570 (2007)). A claim is plausible “when the plaintiff pleads factual content
6 that allows the court to draw the reasonable inference that the defendant is liable for the
7 misconduct alleged.” *Id.* “Determining whether a complaint states a plausible claim for
8 relief [is] . . . a context-specific task that requires the reviewing court to draw on its judicial
9 experience and common sense.” *Id.* at 679.

10 The Ninth Circuit has instructed that courts must “construe *pro se* filings liberally.”
11 *Hebbe v. Pliler*, 627 F.3d 338, 342 (9th Cir. 2010). A “complaint [filed by a *pro se* litigant]
12 ‘must be held to less stringent standards than formal pleadings drafted by lawyers.’” *Id.*
13 (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (per curiam)). Conclusory and vague
14 allegations, however, will not support a cause of action. *Ivey v. Bd. of Regents of the Univ.*
15 *of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982). A liberal interpretation may not supply
16 essential elements of the claim that were not initially pled. *Id.*

17 “If a pleading can be cured by the allegation of other facts, a *pro se* litigant is entitled
18 to an opportunity to amend before the final dismissal of the action.” *Ball v. Cty. of*
19 *Maricopa*, 2017 WL 1833611, *1 (D. Ariz. 2017) (concluding that complaint could not be
20 amended to state a cognizable claim and dismissing with prejudice).

21 II. Analysis

22 Plaintiff brings this action against Defendant 99 Cents Only Store. Construed
23 liberally, it appears that Plaintiff intends to bring claims for public accommodation
24 discrimination (although it is unclear whether this claim is brought under state or federal
25 laws or both),² intentional infliction of emotional distress, product liability, and
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28 ² “When a plaintiff brings an action under [Title II of the Civil Rights Act of 1964],
he cannot recover damages.” *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400, 402
(1968).

1 negligence.³ The allegations describe a wide variety of acts that appear to have taken place
 2 on various dates, but the complaint does not include any allegations as to when any of the
 3 acts took place. Some of the allegations suggest that certain acts happened more than once
 4 without specifying the number of times. For example, Plaintiff alleges that “[a]nytime
 5 [she] asked for the store manager at the Casa Grande location, she would be unavailable”
 6 (Doc. 1 at 4), but the allegations do not establish the number of times this happened.

7 Furthermore, although Plaintiff brings various claims based on various acts that
 8 appear to have taken place on various dates, the allegations in the complaint are set forth
 9 in one lengthy paragraph.

10 Rule 10(b) of the Federal Rules of Civil Procedure provides as follows:

11 A party must state its claims or defenses in numbered paragraphs, each limited
 12 as far as practicable to a single set of circumstances. . . . If doing so would
 13 promote clarity, each claim founded on a separate transaction or occurrence .
 . . must be stated in a separate count

14 Given the multiplicity of claims and the seeming disparate nature of the acts alleged,
 15 separating the counts and clarifying which allegations form the basis of which counts
 16 would help to bring the “simplicity, directness, and clarity” that Rule 8 requires. *McHenry*
 17 *v. Renne*, 84 F.3d 1172, 1178 (9th Cir. 1996). Adhering to the rule requiring that each
 18 allegation be set forth in a separate, numbered paragraph would also help to bring clarity
 19 to the complaint, especially if Plaintiff could include dates and organize the paragraphs in
 20 a sensible manner—for example, chronologically and/or grouped by claim.

21 The Court further notes that elements appear to be missing from at least some of the
 22 claims. Notably, although a plaintiff in a public accommodation discrimination case can
 23 allege “sufficient facts to establish circumstantial intentional race discrimination” by
 24 alleging that “a similarly situated individual outside of the plaintiff’s protected class
 25 received more favorable treatment than the plaintiff,” *Hameen v. Dollar Tree Stores Inc.*,
 26 2022 WL 17416768, *3 (D. Ariz. 2022), and the complaint here alleges that Plaintiff was

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 28 ³ It is not clear whether “negligence” is intended to be a separate claim or is describing
 the type of product liability claim Plaintiff intends to bring.

1 subjected to certain indignities, such as “closing down cash registers and walking away
2 without notice,” such that employees only made themselves available for checkout “when
3 white customer [sic] approached registers,” the complaint fails to allege that Plaintiff is a
4 member of any protected class(es). Specifically, although the complaint identifies the race
5 (“white”) of another customer, it does not identify Plaintiff’s own race.

6 Furthermore, “[i]f a state where an alleged civil rights violation occurs has
7 established an agency with authority to hear complaints of discrimination prohibited by
8 Title II, notification to that agency is a prerequisite for federal jurisdiction.” *Dragonas v.*
9 *Macerich*, 2021 WL 3912853, *3 (D. Ariz. 2021) (cleaned up). The acts alleged in the
10 complaint occurred in Arizona. (Doc. 1.) Pursuant to the Arizona Civil Rights Act
11 (“ACRA”), “[d]iscrimination in places of public accommodation against any person
12 because of race, color, religion, sex, national origin or ancestry is contrary to the policy of
13 this state and [is] unlawful,” such that withholding “accommodations, advantages, facilities
14 or privileges” or making any distinction “in connection with the price or quality of any
15 item, goods or services offered” on those grounds violates Arizona law. A.R.S. § 41-1442.
16 “Alleged violations of the ACRA must first be brought to the attention of the Civil Rights
17 Division of the Arizona Attorney General’s Office by a written charge. An individual may
18 bring a civil action under the ACRA only after the Division has had an opportunity to
19 investigate charges and, if it chooses, to instigate formal or informal processes to address
20 them.” *Miles v. Vasquez*, 2007 WL 3307020, *2 (D. Ariz. 2007) (citing A.R.S. §§ 41-
21 1471, 41-1481). Thus, under both state and federal law, Plaintiff is required to plead that
22 she has notified the Arizona Civil Rights Division of the alleged discrimination giving rise
23 to her claims. *Dragonas*, 2021 WL 3912853 at *3.

24 As for intentional infliction of emotional distress, “[t]he three required elements are:
25 *first*, the conduct by the defendant must be ‘extreme’ and ‘outrageous’; *second*, the
26 defendant must either intend to cause emotional distress or recklessly disregard the near
27 certainty that such distress will result from his conduct; and *third*, severe emotional distress
28 must indeed occur as a result of defendant’s conduct.” *Ford v. Revlon, Inc.*, 734 P.2d 580,

1 585 (Ariz. 1987). Without prejudging whether the pattern of acts alleged in the complaint
2 could satisfy the first two elements, the Court notes that the complaint includes no
3 allegations as to the third.

4 As for product liability and negligence, Plaintiff alleges that she was harmed by two
5 products sold at Defendant's store—a hair dye that burned her scalp and peanuts that “at
6 times tasted rancid or had a chemical like smell/taste of gasoline” and were, on one
7 occasion “crunchier than usual,” which resulted in Plaintiff's tooth breaking. (Doc. 1 at
8 4.) The complaint asserts that the store “has a duty to protect customers and failed to warn
9 about unsafe products.” (*Id.*) However, there also appears to be a suggestion that the
10 unsafe products were deliberately thrust upon Plaintiff. The complaint states, “I am unsure
11 if employees are swapping out store shelf items and would like . . . to explore if someone
12 was directing employees to do all this.” (*Id.*)

13 “A prima facie case of strict products liability is established by showing that when
14 the product left the defendant's control, it was in a defective condition that made it
15 unreasonably dangerous and the defect was a proximate cause of plaintiff's injuries.”
16 *Jimenez v. Sears, Roebuck & Co.*, 904 P.2d 861, 864 (Ariz. 1995). The allegations here
17 are sufficient to make that showing. However, it is unclear whether Plaintiff intends to
18 pursue a strict liability product defect theory, a negligence theory, or both—and/or some
19 kind of intentional tort. To defend against this action, Defendant must know what it “is
20 being sued for.” *McHenry*, 84 F.3d at 1178.

21 The Court will dismiss the complaint with leave to amend. “Dismissal of a pro se
22 complaint without leave to amend is proper only if it is absolutely clear that the deficiencies
23 of the complaint could not be cured by amendment.” *Schucker v. Rockwood*, 846 F.2d
24 1202, 1203-04 (9th Cir. 1988) (internal quotation marks and citation omitted).

25 The amended complaint must adhere to all portions of Rule 7.1 of the Local Rules
26 of Civil Procedure (“LRCiv”). Additionally, the amended complaint must satisfy the
27 pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. Specifically,
28 “[e]ach allegation must be simple, concise, and direct.” Fed. R. Civ. P. 8(d)(1); *see*

1 *also* Fed. R. Civ. P. 10(b) (“A party must state its claims or defenses in numbered
2 paragraphs, each limited as far as practicable to a single set of circumstances.”). Where a
3 complaint contains the factual elements of a cause, but those elements are scattered
4 throughout the complaint without any meaningful organization, the complaint does not set
5 forth a “short and plain statement of the claim” for purposes of Rule 8. *Sparling v. Hoffman*
6 *Constr. Co.*, 864 F.2d 635, 640 (9th Cir. 1988).

7 If the amended complaint fails to comply with the Court’s instructions as provided
8 in this Order, the action may be dismissed pursuant to 28 U.S.C. § 1915(e) and/or Rule
9 41(b) of the Federal Rules of Civil Procedure. *McHenry*, 84 F.3d at 1177 (affirming
10 dismissal with prejudice of amended complaint that did not comply with Rule 8(a)). Given
11 this specific guidance on pleading requirements, the Court is not inclined to grant leave to
12 file another amended complaint if the first amended complaint is found to be
13 deficient. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992) (affirming dismissal
14 with prejudice where district court had instructed *pro se* plaintiff regarding deficiencies in
15 prior order dismissing claim with leave to amend); *Ascon Props., Inc. v. Mobil Oil Co.*,
16 866 F.2d 1149, 1160 (9th Cir. 1989) (“The district court’s discretion to deny leave to amend
17 is particularly broad where plaintiff has previously amended the complaint.”).

18 Plaintiff is directed to become familiar with the Local Rules and the Federal Rules
19 of Civil Procedure and is reminded that the Federal Court Self-Service Clinic provides free
20 civil legal help to self-represented litigants. (See Notice to Self-Represented Litigant, Doc.
21 4.)

22 Accordingly,

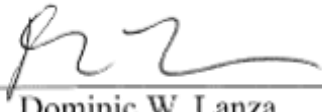
23 **IT IS ORDERED** granting the Application to Proceed in District Court without
24 Prepaying Fees or Costs (Doc. 2).

25 **IT IS FURTHER ORDERED** that the complaint (Doc. 1) is **dismissed** with leave
26 to file an amended complaint within two weeks of the date of this order. The amended
27 complaint must adhere to LRCiv 7.1.

28 **IT IS FURTHER ORDERED** that if Plaintiff fails to file an amended complaint

1 within two weeks of the date of this order, the Clerk of Court shall terminate the action.

2 Dated this 3rd day of May, 2024.

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7 Dominic W. Lanza
8 United States District Judge
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